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Nos. 79-983 and 79-1689

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

UNITED STATES OF AMERICA,

Appellant,

v.

HUBERT L. WILL, ET. AL.,

Appellees.

On Appeals from the United States
District Court for the Northern District of Illinois

BRIEF AMICUS CURIAE OF THE WASHINGTON STATE BAR ASSOCIATION SUPPORTING APPELLEES

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Brief of Amicus Curiae Washington State Bar Association In Support of Appellees

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INTEREST OF AMICUS CURIAE

Pursuant to Rule 36.3, the Washington State Bar Association has moved the Court for permission to file this brief in support of the claims of plaintiffs/appellees, federal

judges in the instant cases.

The Washington State Bar Association is an unified bar association of approximately 10,000 members. It is the tenth largest unified bar association in the United States.

The Board of Governors of the Association and its members are deeply concerned about the quality of the judiciary in both the United States and Washington State court systems. One of the goals of the Washington State Bar Association, according to its by-laws, is to "facilitate the administration of justice." To accomplish this goal, there is a standing committee of the Association which assists, at all levels, with the selection of the members of the judiciary.

The members of this Association, many of whom practice before the federal bench, have firsthand experience with the problems created by the delay in obtaining trials of civil cases in federal courts. This severe problem is created, in part, by the difficulty in attracting the ablest men and women to serve

on the federal bench.

This Bar Association firmly believes that federal judges must receive higher compensation, and that the Acts of Congress at issue in these appeals diminish the compensation of federal judges and thus detract from the goal of attracting the ablest federal judges.

The Association files this brief in support of the appellees, judges because it is firmly committed to the concept of the separation of powers, the heart of the Compensation Clause of the United States Constitution.

This Association has had experience, at the state level, with the necessity of maintaining the doctrine of the strict separation of powers. The Association is concerned that a decision adverse to the plaintiffs/appellees judges would have an adverse impact upon the separation of powers doctrine as it has been interpreted by the Washington State Courts, and a detrimental impact upon the administration of justice in the State of Washington.

SUMMARY OF ARGUMENT

I.

The Association adopts by reference and reaffirms the jurisdictional, statutory and constitutional arguments of the appellees, judges and amicus curiae, American Bar Association, Los Angeles County Bar Association and the Chicago Bar Association.

II.

The Association believes that the concept of separation of powers, which is the heart of the Compensation Clause, will be undermined, if the Court does not affirm the decisions of the United States District Court for the Northern District of Illinois. The Association's experience with the need for a strong doctrine of the separation of powers mandates that it urge that this doctrine be upheld and the District Court's decisions be affirmed.

ARGUMENT

I.

THE WASHINGTON STATE BAR ASSOCIATION

ADOPTS BY REFERENCE AND REAFFIRMS THE JURISDICTIONAL, STATUTORY AND CONSTITUTIONAL ARGUMENTS OF THE APPELLEES/JUDGES AND AMICUS CURIAE, AMERICAN BAR ASSOCIATION, LOS ANGELES COUNTY BAR ASSOCIATION AND CHICAGO BAR ASSOCIATION.

II.

SEPARATION OF POWERS, THE HEART OF THE COMPENSATION CLAUSE, MUST BE UPHELD AND THEREFORE THE DECISIONS OF THE DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS SHOULD BE AFFIRMED.

Appellees, and amicus curiae argue persuasively that the independence of the federal judiciary requires affirmance of the District Court's rulings. (e.g. ABA Bf. at 18-19). The Washington State Bar Association echoes these arguments and respectfully points out that a contrary decision may have an adverse impact upon judicial independence outside of the federal judicial system.

The Washington State Bar Association

expresses this concern because, in carrying out the functions of attorney discipline and admission to practice, it is an arm of the judicial branch of the state government, the Supreme Court of the State of Washington. State ex. rel. Schwab v. State Bar Association, 80 Wn.2d 266, 269, 493 P.2d 1237 (1972).

Historically, the Washington State Bar Association has zealously advocated the independence of the judicial branch and has resisted any intrusion by the legislature or the executive branch.

In In re Ellis, 118 Wash. 484, 203 Pac. 957 (1912), the Board of Law Examiners required all applicants for admission to pass a bar examination, and the Supreme Court of the State of Washington held that a statute which permitted a diploma privilege admission did not negate that requirement of a bar examination because the legislation only suggested a diploma privilege it did not require it.

In 1945, the Washington State Supreme

Court refused to grant admission to applicants who had not passed the bar examination but were veterans of military service, despite a statute authorizing admission under these circumstances during World War II. The court held that the statute was not mandatory and did not change the court rule which admitted veterans only under limited circumstances. In re Levy, 23 Wn.2d 607, 161 P.2d 651 (1945).

Another veteran attempted to gain admission upon motion in 1947, and, again, the Bar Association refused to recommend admission because the veteran had not met the requirements set forth by the court rule that he had to have been in active legal practice for five years after admission to practice in South Dakota. The Washington State Supreme Court upheld this interpretation. State ex. rel. Laughlin v. State Bar Association, 26 Wn.2d 914, 176 P.2d 301 (1947).

The Washington State Bar Association resisted an attempt to require that the offices

of the Association be moved to the state capital as constitutionally required of all departments of the executive. The Association was held not to be required to move its office because it was not an executive department but instead a sui generis association whose important functions are directly related to and in aid of the judicial branch. State ex. rel. Schwab v. State Bar Association, supra at 493.

The Washington State Bar Association's continued assertion of the doctrine of separation of powers and the independence of the judiciary was also challenged by what the Association viewed as the most serious attempt by the executive branch of Washington State government to encroach upon judicial independence.

In 1974, the Washington State Auditor, an elected officer of the executive branch, attempted to conduct an audit of the Washington State Bar Association. Except with regard to admissions fees, the Bar Association

resisted the Auditor's attempt to subpoena its books and records. The trial court refused to honor the Auditor's request and issue the subpoena. The Auditor appealed to the Washington State Supreme Court.

The Bar Association's resistance was not based upon a desire to hide any information. Indeed, the Bar Association's books were independently audited each year. The Bar Association took the position that such an audit would be an unconstitutional violation of the doctrine of separation of powers.

The Washington State Supreme Court upheld the Bar Association's position finding that the legislature did not intend to give the auditor authority to audit the Bar Association, and, if the legislature did so intend, the principles that the regulation of the practice of law was inherently a judicial power, and that in an integrated bar the court has the inherent power to authorize the raising of funds from the members of the legal profession

free from legislative authorization or participation, meant that, if the legislature intended to extend its audit powers to the bar association,: "such an attempt is an unwarranted and unconstitutional interference with the power of this separate branch of government [the judiciary] to make necessary rules and regulations governing the conduct of the bar." Graham v. Bar Association, 86 Wn.2d 624, 633, 548 P.2d 310 (1976).

As outlined above, the Washington State Bar Association has, because the concept is the core of the unified bar and the judicial regulation of the practice of law, continuously and vigorously defended the independence of the judiciary. A decision reversing the District Court's rulings will surely have an impact upon the independent state judiciaries. A decision that requires discriminating intent or somehow erodes any of the protections given to the judiciary by the Compensation Clause could diminish the under-

pinnings of the doctrine of separation of powers as interpreted by the Washington Courts.

If this detrimental impact spreads to the state level, where, as in Washington State, judges are elected, a diminishing of the doctrine of separation of powers would permit and might encourage political pressure upon or political retaliation for judicial decisions. This pressure or retaliation could take the form of the legislature withdrawing funding for courts which render unpopular decisions. Legislatures may also be encouraged to attempt unwarranted interference in the actual functioning of courtrooms such as procedural interference or burdensome watchdog provisions.

Any interference with the judiciary which impairs the ability of the courts to function independently will clearly diminish the ability of state government to function.

Of more immediate concern to the Association is the possible encroachment upon the

independence of the bar as an arm of the judiciary. The Washington State Supreme Court has constantly held that it was the only body with the authority to regulate the practice of law. In re Lambuth, 18 Wash. 478, 51 Pac. 1071(1898). The Court has stated that the reason for this exercise of judicial power is to promote the proper administration of justice and to protect the public. In re Bruen, 102 Wash. 472, 172 Pac. 1152 (1918). Attorneys, unlike other professionals, are officers of the court, and, because of their involvement, are directly linked to the administration of justice. Therefore, the qualifications of lawyers and the regulation of the practice of law must remain an inherent power of the judiciary unfettered by legislation intrusion. Any lessening of the doctrine of the separation of powers could threaten that function and permit the legislative intrusion which has been consistently resisted.

CONCLUSION

A decision affirming the District Court's decisions will demonstrate that the doctrine of the separation of powers remains as strong as ever. The Washington State Bar Association urges the Court to affirm the decision and direct that the federal judges receive the compensation they are entitled to.

October 8, 1980.

Respectfully Submitted,

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